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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1954

No. 427

C. R. BARNES, Et Al.,
Petitioners,

vs.

THE AKRON, CANTON & YOUNGSTOWN RAILROAD COMPANY, Et Al.,
Respondents.

BRIEF OF RESPONDENT RAILROADS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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OPINIONS BELOW

The opinion of the District Court is not published, but is set forth at R. 61.

The opinions of the Court of Appeals are published at 215 F. 2d 423 and are printed in the Petition for Certiorari at Appendix B, pp. 24 *et seq.*

JURISDICTION

Petitioners invoke the jurisdiction of this Court under 28 U.S.C. Section 1254(1).

QUESTION PRESENTED

When a controversy between carriers and employees subject to the Railway Labor Act as to the statutory duties and rights of bargaining on specific proposals for agreements is sufficiently definite and concrete that the employees can properly submit it to the Court for adjudication, is the controversy justiciable when presented on the complaint of the carriers for declaratory judgment and such other relief as may be just?

STATUTES INVOLVED

1. The Federal Declaratory Judgment Act, 28 U.S.C. Section 2201.

2. The Railway Labor Act, 45 U.S.C. Sections 151 *et seq.*

STATEMENT OF THE CASE

(A) Developments Subsequent to Judgment of Court of Appeals.

There have been important developments subsequent to the decision below which should be brought to the attention of this Court at the outset. Part, but only part, of those developments which occurred prior to the filing of the Petition for Certiorari are referred to in the Petition (p. 6). Others have occurred after the Petition was filed. Due to these changes in conditions, the plaintiffs, immediately upon the return of this case to the District Court, will take action for voluntary dismissal of the complaint under Rule 41(a) of the Rules of Civil Procedure. Under these circumstances, the application for certiorari is decidedly improvident.

On August 10, 1954, the Court of Appeals entered its judgment reversing the allowance of the defendants' motion to dismiss the complaint. Almost all of the 201 plaintiffs entered into an agreement on August 21, 1954 with the unions named in the complaint. The unions withdrew their demands for free transportation, for life insurance and, with respect to dependents of employees, for hospital, medical and surgical expenses. An agreement was reached as to the demands for hospital, medical and surgical expenses for employees. This, together with the other provisions of the agreement, disposed of all the issues described in the complaint between the parties to that agreement. All but one of the unions were parties to that agreement and that union (Hotel and Restaurant Employes' and Bartenders' International Union) entered into a separate agreement described below.

The Petition, at page 6, names twelve Southeastern railroads as not having been parties to the general agreement

of August 21, 1954. The fact is that one of the railroads so named (Gulf, Mobile and Ohio Railroad Company) became a party to that agreement a few days thereafter. Another one of the railroads so named (Central of Georgia Railway Company) has subsequently entered into an agreement with the unions disposing of all issues between them on the matters involved in the complaint. This agreement of the Central of Georgia was executed after the Petition for Certiorari was filed. In addition, the Richmond, Fredericksburg and Potomac Railroad Company on November 22 similarly entered into an agreement with the unions disposing of all of the issues involving that railroad.

Moreover, *all* of the plaintiff railroads (including the Southeastern railroads named at page 6 of the Petition) on whose lines certain employees were represented by the Hotel and Restaurant Employes' and Bartenders' International Union entered into a separate agreement with that union on August 21, 1954, disposing of all issues between them on the matters involved in the complaint.

In separate agreements between The Pullman Company, which is one of the plaintiffs, and the various defendant unions which represent its employees, those parties similarly disposed of all issues between them on the matters involved in the complaint. Some of those agreements were concluded before and some after the filing of the Petition for Certiorari.

Both before and after the filing of the Petition there have been extended discussions between the few other plaintiffs and the remaining unions in an effort to reach agreements. Among other things, local conditions are involved on those railroads. The terms of the general agreement of August 21, 1954, other than those relating to hospital and medical expenses, have been placed in effect

on several of those railroads. Each of the remaining railroads has offered to enter into agreements as to hospital and medical expenses for employees which would be similar in some respects to the general agreement of August 21, 1954 and different in certain other respects. There has been no settlement between those railroads and unions. However, the conditions have so radically changed that continued prosecution of this suit is deemed inappropriate for them as well as for the other plaintiffs, and those railroads will therefore join in the voluntary dismissal of this complaint under Rule 41(a) upon the return of the case to the District Court.

We shall discuss below the reasons why certiorari to review the disposition of the defendants' motion to dismiss the complaint should be denied even if these developments subsequent to the judgment of the Court of Appeals had not occurred. In addition, we submit that these recent and radical changes in circumstances make it clearly apparent that the Court should not grant certiorari in this case.

(B) The Case Prior to the Recent Developments.

There has been no trial or decision on the merits in this case and the defendants have filed only a motion to dismiss. The District Court ordered dismissal of the complaint (R. 61). The Court of Appeals reversed that ruling (Petition, Appendix B, pp. 23 *et seq.*).

The Statement of the Case in the Petition for Certiorari is deficient in several respects. One important deficiency is that it refers only to proposals made by the unions. The Petition completely ignores the allegations of the complaint concerning the proposals made by the railroads to the unions for changes in the existing agreements and the wrongful refusal of the unions to bargain upon those

proposals. The case stated and discussed by Petitioners is not the case stated in the complaint and discussed in the opinion of the Court of Appeals.

The complaint, which was filed by all the principal railroads in the United States, alleged that the plaintiff railroads and the labor unions named in the complaint were parties to agreements made pursuant to the Railway Labor Act concerning rates of pay, rules and working conditions. It further alleged that demands for changes in those agreements had been made both by the unions and by the railroads (R. 56). The demands presented by the railroads and some of the demands presented by the unions concerned "rates of pay, rules, or working conditions" within the meaning of those terms in the Railway Labor Act but, the complaint alleged, certain other demands of the unions did not concern "rates of pay, rules, or working conditions." These latter demands were (a) for free transportation both of employees and of their wives and dependents on the line of the employer and also on the lines of all other railroads; (b) for life insurance at the expense of the employer; and (c) for all hospital, medical and surgical care incident to any sickness, injury or other disability of all employees and their spouses and dependents at the expense of the employer, regardless of the cause of the sickness, injury or disability. Matters of the nature of the foregoing demands traditionally have not been the subject of collective bargaining under the Railway Labor Act (R. 49-50).

The plaintiffs informed the unions that the plaintiffs were willing to bargain regarding the proposals of the unions which concerned rates of pay, rules or working conditions and regarding the proposals which had been made by the plaintiffs themselves, but that since the unions' proposals described above did not concern rates of pay, rules

or working conditions, they were not proper subjects of collective bargaining under the Railway Labor Act. Plaintiffs therefore refused to bargain regarding those latter proposals. The unions, however, refused to bargain as to the plaintiffs' proposals and as to any of the unions' proposals unless the plaintiffs would agree to bargain upon the proposals which, the complaint alleges, do not concern rates of pay, rules or working conditions.

The complaint alleged that the representatives of the unions thereupon walked out of and terminated the meeting with plaintiffs' representatives (R. 56). Thereafter, this suit was filed. The National Mediation Board failed to adjust the dispute and notified the parties that its services were terminated. The unions announced that they were taking a strike vote with respect to all their proposals (R. 57). The complaint alleged, among other things, that the procedure established by Congress in the Railway Labor Act with respect to the making of agreements concerning rates of pay, rules and working conditions was being interfered with and thwarted by the wrongful action of the unions in refusing to bargain on proposals of both parties concerning rates of pay, rules or working conditions unless plaintiffs would bargain upon the other proposals described above (R. 57). It further alleged that the continuance of transportation service to the public was threatened with impairment (R. 24). It alleged that the economic harm which was threatened to plaintiffs, to the public and to other employees of the plaintiffs was predicated on the wrongful insistence of the unions upon bargaining with respect to the proposals described above as a condition to their consent to bargain upon the other proposals of both parties (R. 58).

The complaint therefore prayed for an adjudication that the unions' proposals described above do not affect or concern "rates of pay, rules, or working conditions" within the

meaning of those terms in the Railway Labor Act; that the proposals are not proper subject matter for the collective bargaining required of plaintiffs by that Act; and that the plaintiffs are subject to no legal duty under that Act or otherwise to bargain as to the unions' proposals described above. The complaint asked for such other and further relief as may be just in the circumstances of the case (R. 24-25).

On May 15, 1954, the Emergency Board created by the President to investigate and report to him with respect to the controversy issued its report. As the opinion of the Court of Appeals notes, the Emergency Board held that the questions as to whether the unions' demands described above come within the language of the Railway Labor Act are legal questions which the Board did not feel it should attempt to answer. The Board stated: "They are questions involving statutory construction and for the courts to determine" (Petition, Appendix B, p. 25).

The Court of Appeals reviewed the complaint in the light of the Declaratory Judgment Act, the Railway Labor Act and the decisions of this Court. It concluded "that there could be no clearer case of an actual ripened legal controversy between the parties as to their respective statutory rights and obligations" and stated that neither party "was bound to wait until the other took physical action or until a strike or lockout was actually instituted." (*Id.*, pp. 30-31)

The dissenting opinion in the Court of Appeals stated that plaintiffs could sue to force the defendants to bargain upon plaintiffs' proposals, that "In such a case plaintiffs could urge and obtain a decision such as they ask in the case at bar" (Petition, Appendix B, p. 39), and that "the dispute between the plaintiffs and the defendants can be settled by the courts in an enforcement suit brought by

either party, as hereinbefore pointed out" (*id.*, p. 41). The dissenting opinion gave no consideration to the provision of the Declaratory Judgment Act that declarations of rights and other legal relations may be made thereunder "whether or not further relief is or could be sought." (28 U. S. C. A. Sec. 2201). It also gave no consideration to the fact that the amended complaint asked, in addition to the declaration of rights and legal obligations, for such other relief as might be just in the circumstances.

ARGUMENT

I. The Complaint Presented an Actual Controversy Appropriate for Judicial Determination.

The Court of Appeals was entirely correct in holding that the complaint presents "an actual controversy which can be judicially determined."

The classic case defining "controversy" with respect to declaratory judgment actions is *Aetna Life Insurance Co.* v. *Haworth*, 300 U.S. 227. The Court there stated:

> "A 'controversy' in this sense must be one that is appropriate for judicial determination. *Osborn* v. *United States Bank*, 9 Wheat. 738, 819. A justiciable controversy is thus distinguished from a difference or dispute of a hypothetical or abstract character; from one that is academic or moot. *United States* v. *Alaska S. S. Co.*, 253 U.S. 113, 116. The controversy must be definite and concrete, touching the legal relations of parties having adverse legal interests. *South Spring Gold Co.* v. *Amador Gold Co.*, 145 U.S. 300, 301; *Fairchild* v. *Hughes*, 258 U.S. 126, 129; *Massachusetts* v. *Mellon*, 262 U.S. 447, 487, 488. It must be a real and substantial controversy admitting of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts. • • • Where there is such a concrete case admitting of an immediate and definitive determination of the legal rights of the parties in an adversary proceeding upon the facts alleged, the judicial function may be appropriately exercised although the adjudication of the rights of the litigants may not require the award of process or the payment of damages. *Nashville, C. & St. L. Ry. Co.* v. *Wallace, supra*, p. 263; *Tutun* v. *United States*, 270 U.S. 568, 576, 577; *Fidelity National Bank* v. *Swope*, 274 U.S. 123, 132; *Old Colony Trust Co.* v. *Commissioner, supra*, p. 725. And as it is not essential to the exercise of the judicial power that an injunction

> be sought, allegations that irreparable injury is threatened are not required. *Nashville C. & St. L. Ry. Co.* v. *Wallace, supra,* p. 264." (pp. 240-241)

In *Maryland Casualty Co.* v. *Pacific Coal & Oil Co.*, 312 U.S. 270, 273, the Court summarized the nature of the inquiry as follows:

> "The difference between an abstract question and a 'controversy' contemplated by the Declaratory Judgment Act is necessarily one of degree, and it would be difficult, if it would be possible, to fashion a precise test for determining in every case whether there is such a controversy. Basically, the question in each case is whether the facts alleged, under all the circumstances, show that there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment. See *Aetna Life Ins. Co.* v. *Haworth*, 300 U.S. 227, 239-242."

And in *Public Service Commission* v. *Wycoff Co.*, 344 U.S. 237, 243, the Court stated:

> "The disagreement must not be nebulous or contingent but must have taken on fixed and final shape so that a court can see what legal issues it is deciding, what effect its decision will have on the adversaries, and some useful purpose to be achieved in deciding them."

Review of the allegations of the complaint shows that it fully meets these standards. It seeks a determination of the statutory obligations of the parties to take immediate bargaining action upon specific written demands. The facts and issues are presented to the Court in the complaint. They are definite and concrete, arising from very real demands, refusals of bargaining and threats of strike without bargaining. There is no request for an opinion advising what the law would be upon a hypothetical state of

facts or hypothetical demands for bargaining. The facts are specific. The issues are confined to present ones admitting of specific relief through a decree of conclusive character adjudicating the rights and duties of the parties as to bargaining upon the specific demands. And the disagreement had taken on a fixed and final shape so that the court could see the precise legal issues raised by the impasse, the effect its decision would have on the parties and the desirable purpose to be achieved in the decision.

The fact that the controversy in large part has been settled by agreement of the parties subsequent to the decision of the Court of Appeals does not mean that the disagreement was not in fixed and final shape at that time. Any case may be voluntarily settled by the parties at any stage of the litigation, but that ever-present possibility does not detract from the jurisdiction of the court before settlement is accomplished.

The controversy involves the application of the Railway Labor Act to the facts stated in the complaint. The purposes to be served by the judgment are the purposes of Congress as expressed in that Act. The first of the general purposes of the Railway Labor Act is "To avoid any interruption to commerce or to the operation of any carrier engaged therein; * * *." (45 U.S.C.A. Sec. 151a). To accomplish that result, another of the general purposes of the Act is "to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; * * *." To effectuate this, Congress has provided that "It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, * * *." (45 U.S.C.A. Sec. 152).

When the unions, as alleged in the complaint, refused to bargain upon the proposals submitted by the railroads and upon the other proposals of the unions, which did concern "rates of pay, rules, and working conditions," they were violating the statutory duty they owed to the plaintiffs. As the complaint alleges, the bargaining procedure established by Congress in that Act was interfered with and thwarted. The unions refused to perform their statutory duty of bargaining on those matters and threatened to disrupt the transportation service by strikes unless the railroads would agree to bargain upon subjects which the complaint alleges did not concern rates of pay, rules or working conditions. The unions insisted that plaintiffs had a duty under the Act to bargain with them upon the latter proposals. The adjudication which the complaint sought would settle with finality those issues of the legal rights and duties of the parties in respect to bargaining.

Such an adjudication would be binding upon the parties. If necessary, the Court could order further relief, as prayed for in the complaint, and shape its order according to the circumstances, but it may properly be assumed that the declaration and adjudication itself would be respected without the need for such coercive orders from the Court. The decision would be fully effective to accomplish the purposes of the Act as to collective bargaining upon the proposals described in the complaint. Those proposals include the proposals submitted by the railroads on which the unions wrongfully refused to bargain, a part of the complaint that is not discussed in the Petition for Certiorari.

It has long been clear that the duties of bargaining laid upon the parties by the Railway Labor Act are mandatory and are proper for judicial determination. *Virginian R. Co.* v. *System Federation No. 40,* 300 U.S. 515. The Court in

that case rejected the argument that Congress intended the statutory duty of bargaining to be left to voluntary processes and excluded from the jurisdiction of the courts. The carrier there had refused to bargain with the union and the latter sued to enforce bargaining. The decision of this Court affirmed the entry of a mandatory injunction requiring bargaining. It held that Congress had created legal obligations which the federal courts should construe and enforce even though the Act did not provide penalties for refusal to bargain. A recent case to the same effect is *Brotherhood of R. & S. Clerks* v. *Atlantic Coast Line R. Co.*, 201 F. (2d) 36 (C.A. 4, 1953), cert. denied, 345 U.S. 992.

Both the majority and the dissenting opinions in the Court of Appeals note that this controversy might have been submitted to the Court for adjudication on a complaint by the unions (Petition, Appendix B, pp. 31, 38-39). And Petitioners have conceded, as they must, that the matter was proper for adjudication by the courts in a suit brought by them. In other words, all are agreed that the subject matter of this suit is proper for determination by the courts, that a "controversy" exists which is ripe for adjudication and that Congress intended the courts to exercise their authority in such a controversy. In those circumstances, the decision of the Court of Appeals that the admitted existing controversy could properly be submitted to the courts in this complaint filed by the railroads as well as in one filed by the unions is thoroughly in accord with the decisions of this Court. The Court ruled on this point in *Aetna Life Insurance Co.* v. *Haworth*, 300 U.S. 227, 244, as follows:

> "It is the nature of the controversy, not the method of its presentation or the particular party who presents it, that is determinative."

And in *Maryland Casualty Co.* v. *Pacific Coal & Oil Co.*, 312 U.S. 270, 273, the Court stated:

> "It is immaterial [in determining whether a complaint presents a 'controversy'] that frequently, in the declaratory judgment suit, the positions of the parties in the conventional case are reversed; the inquiry is the same in either case."

The principle is clear that the existence of a justiciable controversy does not depend upon which party submits the controversy to the court for decision and the Court of Appeals was correct in holding that the present controversy could be submitted on complaint of the railroads just as it could be on complaint of the unions.

II. The Complaint is Appropriate for Judicial Determination to Carry Out the Purposes of the Railway Labor Act.

The questions at issue here are not like those in jurisdictional disputes between labor organizations where, as in *General Committee* v. *MKT R. Co.*, 320 U. S. 323, it is held that the courts have no authority to act on the complaint of *any* interested party. Here the questions concern the carrying out of the mandate laid upon the parties by the Railway Labor Act, requiring them to bargain in an effort to make and maintain agreements concerning rates of pay, rules or working conditions. Court action in furtherance of that mandate clearly is intended by Congress, as the Court held in the *Virginian* case, *supra*, p. 13. Unlike the situation as to jurisdictional disputes, where no party can seek court action, it is agreed by each of the four judges below and conceded by the defendants that court action on the issues of the present dispute is appropriate. The discussion at pages 13 and 14 of the Petition concerning the rule in the *General Committee* case is irrelevant to the type of issues presented by this complaint.

Petitioners also err in arguing that a decision of the issues of the complaint as presented by the railroads would nullify administrative procedures provided by Congress for resolving disputes. This is a suit to effectuate the very type of collective bargaining that the Act requires, namely, bargaining in an effort to make and maintain agreements concerning rates of pay, rules, and working conditions. The unions wrongfully refused to bargain upon the proposals submitted by the railroads and refused to bargain upon the proposals submitted by the unions themselves unless the railroads would agree to bargain upon matters which the complaint alleges are outside the scope of the bargaining required by the Railway Labor Act. There is no administrative agency provided by the Act to make the necessary determination of the issues thereby created.

The National Railroad Adjustment Board has nothing to do with the making or changing of agreements. Its jurisdiction is confined to disputes "growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions • • •" (45 U.S.C.A. Sec. 153 First (i)). The National Mediation Board has authority to decide who are the designated and authorized representatives of employees (45 U.S.C.A. Sec. 152 Ninth) but no authority to decide whether the employees or the carriers are fulfilling their statutory bargaining duties and no authority to interpret the Act in this respect. In this matter the Mediation Board notified the parties that its services of mediation were terminated (R. 57).

The Emergency Boards which may be created by order of the President under the Railway Labor Act are authorized only to "investigate promptly the facts as to the dispute and make a report thereon to the President" (45 U.S.C.A. Sec. 160). They have no power to make an order

or an authoritative decision. The Emergency Board in this case, as the Court of Appeals noted in its opinion, held that the Board could not make such a determination of the questions. It stated that "They are questions involving statutory construction and for the courts to determine" (Petition, Appendix B, p. 25). Petitioners, in the guise of aiding the administrative processes, would have the courts refuse to decide questions which the Board itself has declared could be decided only by the courts.

III. The Decision Below is in Accord with the Decisions of This Court.

Petitioners' argument that the decision below conflicts with the decisions of this Court is principally based on *Public Service Commission* v. *Wycoff Co.*, 344 U.S. 237 and *International Union* v. *Boyd*, 347 U.S. 222 (Petition, pp. 7 *et seq.*). Those decisions, among others, were discussed in the briefs and argument below and it was shown that they offer no support for the unions' position. In the *Wycoff* case, the plaintiff sued for a declaration that its operations were in interstate commerce. The Court stated that the plaintiff there "offered no evidence whatever of any past, pending or threatened action by the Utah Commission touching its business in any respect" and further stated that the trial court had "made a general finding that no such interference had been made or threatened" (p. 240). Here, in contrast, the unions had made demands upon the plaintiffs and had refused to bargain upon the demands made by plaintiffs unless plaintiffs would agree to bargain on matters alleged to be outside the scope of bargaining under the Railway Labor Act. Moreover, the unions, after so refusing to bargain, threatened a strike to compel agreement on its disputed demands, with all the attendant economic harm to the plaintiffs, the public and other railroad employees.

The purpose of the complaint in the *Wycoff* case was not disclosed and the effects of an abstract decision as to whether it was engaged in interstate commerce would reach far beyond the confines of that case. Here actual specific demands are in question, the purpose of the action is to effectuate the purposes of the Railway Labor Act with respect to bargaining upon specific demands and the issues are strictly confined to those particular demands.

The *Boyd* case also was an instance of lack of justiciable controversy where only a hypothetical future situation was involved rather than the immediate application of a statute to definite and concrete facts. There a union sued for injunction and declaratory judgment to prevent an Immigration Director from construing the Immigration and Naturalization Act of 1952 so as to treat aliens domiciled in the United States who might return from temporary work in Alaska as if they were entering the United States for the first time. The suit was brought before the members of the union had departed for Alaska to perform the customary summer work there and, of course, before any had applied for or been denied readmittance. The Court said that "Determination of the scope and constitutionality of legislation in advance of its immediate adverse effect in the context of a concrete case involves too remote and abstract an inquiry for the proper exercise of the judicial function" (p. 448). Here, in contrast, the case is concrete and determination of the scope of the Railway Labor Act is sought solely with reference to the concrete facts which had already occurred and which are recited in the complaint. As recognized by all, this controversy is so definite and certain that the railroad unions properly could bring suit in court upon the facts stated in the complaint. Where the issues are hypothetical and academic, involving speculation as to future facts, however, as in the *Boyd* case, neither party

could maintain suit either for injunction or for declaratory judgment.

Petitioners do not discuss the other cases which they cite together with the *Wycoff* and *Boyd* cases, but those decisions similarly involved either absence of adverse legal interests or hypothetical and future situations. For instance, in *Eccles* v. *Peoples Bank*, 333 U.S. 426, the defendants had made no demands upon the plaintiff and formally disavowed any intention to do so on the basis of any facts then existing. And in *Coffman* v. *Breeze Corporations, Inc* 323 U.S. 316, there were no adverse parties. The plain[illegible] there sought a declaratory judgment that the Royalty A[illegible] justment Act was unconstitutional. It did not seek recovery of royalties in that suit. The defendant said it owed no royalties to plaintiff and took no position at all on the constitutional question. Accordingly, the parties not being adverse on the sole question presented to the Court, the question was without legal significance. Here, however, there is neither any speculation about future facts nor any absence of adversary legal positions.

In considering whether certiorari should be granted or denied, it is important to note that there has as yet been no decision upon the merits in this case. The sole issue for decision has been the disposition of a motion to dismiss the complaint. In acting upon that motion, the Court of Appeals has carefully reviewed the allegations of the complaint, an important part of which, as we have noted, is not referred to or discussed in the Petition for Certiorari. That Court also has considered carefully the decisions of this Court upon questions of justiciable controversies and has concluded that the case is one in which the District Court had jurisdiction. The decision below has not undertaken

to determine the scope of the collective bargaining required of the parties by the Railway Labor Act with respect to the demands in question; that determination would await pleadings by the defendants and an opportunity for a hearing on the merits. The case has not reached the point where review by this Court is appropriate.

Moreover, in view of the changes in circumstances subsequent to the decision of the Court of Appeals, which are described in the Statement of Facts above, it is apparent that this case will never reach that point.

CONCLUSION

For the foregoing reasons, the Petition for Certiorari should be denied.

Respectfully submitted,

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